

believe that the possible ground for discipline alleged has occurred with respect to non-grieving clients. Neither a request for, nor disclosure of, such information shall constitute a violation of any USPTO Rules of Professional Conduct.

(g) Where the OED Director makes a request under paragraph (f)(2) of this section to a Contact Member of the Committee on Discipline, such Contact Member shall not, with respect to the practitioner connected to the OED Director's request, participate in the Committee on Discipline panel that renders a probable cause determination under paragraph (b)(1) of this section concerning such practitioner, and that forwards the probable cause finding and recommendation to the OED Director under paragraph (b)(2) of this section.

(h) *Disposition of investigation.* Upon the conclusion of an investigation, the OED Director may:

(1) Close the investigation without issuing a warning, or taking disciplinary action;

(2) Issue a warning to the practitioner;

(3) Institute formal charges upon the approval of the Committee on Discipline; or

(4) Enter into a settlement agreement with the practitioner and submit the same for approval of the USPTO Director.

(i) *Closing investigation.* The OED Director shall terminate an investigation and decline to refer a matter to the Committee on Discipline if the OED Director determines that:

(1) The information or evidence is unfounded;

(2) The information or evidence relates to matters not within the jurisdiction of the Office;

(3) As a matter of law, the conduct about which information or evidence has been obtained does not constitute grounds for discipline, even if the conduct may involve a legal dispute; or

(4) The available evidence is insufficient to conclude that there is probable cause to believe that grounds exist for discipline.

[73 FR 47689, Aug. 14, 2008, as amended at 77 FR 45251, July 31, 2012; 78 FR 20200, Apr. 3, 2013]

§ 11.23 Committee on Discipline.

(a) The USPTO Director shall appoint a Committee on Discipline. The Committee on Discipline shall consist of at least three employees of the Office. None of the Committee members shall report directly or indirectly to the OED Director or any employee designated by the USPTO Director to decide disciplinary matters. Each Committee member shall be a member in good standing of the bar of the highest court of a State. The Committee members shall select a Chairperson from among themselves. Three Committee members will constitute a panel of the Committee.

(b) *Powers and duties of the Committee on Discipline.* The Committee shall have the power and duty to:

(1) Meet in panels at the request of the OED Director and, after reviewing evidence presented by the OED Director, by majority vote of the panel, determine whether there is probable cause to bring charges under § 11.32 against a practitioner; and

(2) Prepare and forward its own probable cause findings and recommendations to the OED Director.

(c) No discovery shall be authorized of, and no member of the Committee on Discipline shall be required to testify about deliberations of, the Committee on Discipline or of any panel.

(d) The Chairperson shall appoint the members of the panels and a Contact Member of the Committee on Discipline.

§ 11.24 Reciprocal discipline.

(a) *Notification of OED Director.* Within thirty days of being publicly censured, publicly reprimanded, subjected to probation, disbarred or suspended by another jurisdiction, or being disciplinarily disqualified from participating in or appearing before any Federal program or agency, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the same. A practitioner is deemed to be disbarred if he or she is disbarred, excluded on consent, or has resigned in lieu of a disciplinary proceeding. Upon receiving notification from any source or otherwise learning that a practitioner subject to the disciplinary jurisdiction of

the Office has been so publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended or disciplinarily disqualified, the OED Director shall obtain a certified copy of the record or order regarding the public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification and file the same with the USPTO Director. The OED Director shall, in addition, without Committee on Discipline authorization, file with the USPTO Director a complaint complying with § 11.34 against the practitioner predicated upon the public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification. The OED Director shall request the USPTO Director to issue a notice and order as set forth in paragraph (b) of this section.

(b) *Notification served on practitioner.* Upon receipt of a certified copy of the record or order regarding the practitioner being so publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended or disciplinarily disqualified together with the complaint, the USPTO Director shall issue a notice directed to the practitioner in accordance with § 11.35 and to the OED Director containing:

(1) A copy of the record or order regarding the public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification;

(2) A copy of the complaint; and

(3) An order directing the practitioner to file a response with the USPTO Director and the OED Director, within forty days of the date of the notice establishing a genuine issue of material fact predicated upon the grounds set forth in paragraphs (d)(1)(i) through (d)(1)(iv) of this section that the imposition of the identical public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification would be unwarranted and the reasons for that claim.

(c) *Effect of stay in another jurisdiction.* In the event the public censure, public reprimand, probation, disbarment, suspension imposed by another jurisdiction or disciplinary disqualification imposed in the Federal program or agency has been stayed, any reciprocal discipline imposed by the

USPTO may be deferred until the stay expires.

(d) *Hearing and discipline to be imposed.* (1) The USPTO Director shall hear the matter on the documentary record unless the USPTO Director determines that an oral hearing is necessary. After expiration of the forty days from the date of the notice pursuant to provisions of paragraph (b) of this section, the USPTO Director shall consider any timely filed response and shall impose the identical public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification unless the practitioner clearly and convincingly demonstrates, and the USPTO Director finds there is a genuine issue of material fact that:

(i) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) There was such infirmity of proof establishing the conduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject;

(iii) The imposition of the same public censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification by the Office would result in grave injustice; or

(iv) Any argument that the practitioner was not publicly censured, publicly reprimanded, placed on probation, disbarred, suspended or disciplinarily disqualified.

(2) If the USPTO Director determines that there is no genuine issue of material fact, the USPTO Director shall enter an appropriate final order. If the USPTO Director is unable to make such determination because there is a genuine issue of material fact, the USPTO Director shall enter an appropriate order:

(i) Referring the complaint to a hearing officer for a formal hearing and entry of an initial decision in accordance with the other rules in this part, and

(ii) Directing the practitioner to file an answer to the complaint in accordance with § 11.36.

(e) *Adjudication in another jurisdiction or Federal agency or program.* In all other respects, a final adjudication in

another jurisdiction or Federal agency or program that a practitioner, whether or not admitted in that jurisdiction, has been guilty of misconduct shall establish a prima facie case by clear and convincing evidence that the practitioner has engaged in misconduct under § 11.804.

(f) *Reciprocal discipline—action where practice has ceased.* Upon request by the practitioner, reciprocal discipline may be imposed *nunc pro tunc* only if the practitioner promptly notified the OED Director of his or her censure, public reprimand, probation, disbarment, suspension or disciplinary disqualification in another jurisdiction, and establishes by clear and convincing evidence that the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58. The effective date of any public censure, public reprimand, probation, suspension, disbarment or disciplinary disqualification imposed *nunc pro tunc* shall be the date the practitioner voluntarily ceased all activities related to practice before the Office and complied with all provisions of § 11.58.

(g) *Reinstatement following reciprocal discipline proceeding.* A practitioner may petition for reinstatement under conditions set forth in § 11.60 no sooner than completion of the period of reciprocal discipline imposed, and compliance with all provisions of § 11.58.

[73 FR 47689, Aug. 14, 2008, as amended at 78 FR 20200, Apr. 3, 2013]

§ 11.25 Interim suspension and discipline based upon conviction of committing a serious crime.

(a) *Notification of OED Director.* Upon being convicted of a crime in a court of the United States, any State, or a foreign country, a practitioner subject to the disciplinary jurisdiction of the Office shall notify the OED Director in writing of the same within thirty days from the date of such conviction. Upon being advised or learning that a practitioner subject to the disciplinary jurisdiction of the Office has been convicted of a crime, the OED Director shall make a preliminary determination whether the crime constitutes a serious crime warranting interim suspension. If the crime is a serious crime,

the OED Director shall file with the USPTO Director proof of the conviction and request the USPTO Director to issue a notice and order set forth in paragraph (b)(2) of this section. The OED Director shall in addition, without Committee on Discipline authorization, file with the USPTO Director a complaint against the practitioner complying with § 11.34 predicated upon the conviction of a serious crime. If the crime is not a serious crime, the OED Director shall process the matter in the same manner as any other information or evidence of a possible violation of any USPTO Rule of Professional Conduct coming to the attention of the OED Director.

(b) *Interim suspension and referral for disciplinary proceeding.* All proceedings under this section shall be handled as expeditiously as possible.

(1) The USPTO Director has authority to place a practitioner on interim suspension after hearing the request for interim suspension on the documentary record.

(2) *Notification served on practitioner.* Upon receipt of a certified copy of the court record, docket entry or judgment demonstrating that the practitioner has been so convicted together with the complaint, the USPTO Director shall forthwith issue a notice directed to the practitioner in accordance with §§ 11.35(a), (b) or (c), and to the OED Director, containing:

(i) A copy of the court record, docket entry, or judgment of conviction;

(ii) A copy of the complaint; and

(iii) An order directing the practitioner to file a response with the USPTO Director and the OED Director, within forty days of the date of the notice, establishing that there is a genuine issue of material fact that the crime did not constitute a serious crime, the practitioner is not the individual found guilty of the crime, or that the conviction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

(3) *Hearing and final order on request for interim suspension.* The request for interim suspension shall be heard by the USPTO Director on the documentary record unless the USPTO Director determines that the practitioner's response establishes a genuine issue of